IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Man Singh
Vs.
State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.2669/2002
UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 05th September, 2006

REPORTABLE

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Harish Purohit, Advocate for the petitioner.
Mr.Rameshwar Dave, Dy. Govt. Advocate for respondents.

BY THE COURT

The petitioner Man Singh was serving as a Constable under the Superintendent of Police, District Bikaner, Bikaner. While he was posted at Police Station, Kolayat, he proceeded on five days' casual leave and together with two days' holidays on 04th May, 1992. He was to report back to the Police Station on 12th May, 1992. When he did not turn up, his absence was entered in

Rojnamcha. A telegram of the petitioner was received in Police Station on 15th May, 1992 seeking extension of leave by seven days'. During the period this seven days a criminal case was registered against the petitioner on 17th May, 1992 with Police Station, Nokha regarding an incident which had taken place on 11:00 PM in village Roda for offences under Sections 302, 323, 323/342 IPC and Section 27 of the Arms Act. The petitioner during the course of investigation of the said criminal case was arrested on 19th May, 1992 and was sent to Jail. The petitioner Man Singh along with three other accused was convicted for the aforesaid offences by the court of Additional Sessions Judge No.2, Bikaner vide judgment dated 15th May, 1997 and was sentenced to imprisonment of life.

A Memorandum of charge-sheet was served on the petitioner under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeals) Rules, 1958 (for short 'CCA Rules') on 29th July, 1994 when he was still in confinement. Charge No.1 against him was that he did not report back on duty when the period of sanctioned leave expired on 12th May, 1992. Charge No.2 was to the effect that telegram for extension of leave of seven days' was received with a delay of four days' and the reason of illness assigned therein was not substantiated by any medical certificate. Charge No.3 was relating to his

involvement in the criminal case in which reference was made to pending trial against him. It appears that petitioner did not submit any reply to the charge-sheet in the disciplinary proceedings. The disciplinary authority vide his order dated 31st August, 1994 appointed a Circle Officer (Sough) as Inquiry Officer. The Inquiry Officer submitted a report on 07th November, 1994 to the disciplinary authority to the effect that the delinquent employee Man Singh was in judicial custody in Central Jail, Bikaner and, therefore, unable to defend himself. Some of the witnesses are from the party opposing the delinquent in the criminal trial and, therefore, they would not like to appear during inquiry before the delinquent officer in Jail. In the absence of defence assistant also the delinquent would not be able to get justice. Conduct of inquiry in such circumstances would be against the principles of natural justice. On receipt of such report from the Inquiry Officer, the disciplinary authority by its order dated 08th November, 1994 dropped the disciplinary proceedings against the petitioner and directed that disciplinary proceedings shall be re-initiated after the petitioner came out of jail upon being released.

When the petitioner was convicted and sentenced to imprisonment of life by judgment of the learned Additional Sessions Judge No.2, Bikaner dated 15th May, 1997, the

disciplinary authority vide his order dated 20th January, 1998 directed for re-initiation of the disciplinary proceedings and accordingly forwarded list of the witnesses and documents to SHO Police Station, Kotwali, Bikaner for being served upon the petitioner. The inquiry officer by his communication dated 25th September, 1999 informed the petitioner that statement of all the witnesses of the department has since been recorded by him and therefore if the petitioner wanted to produce any statement or evidence in defence he should do so within ten days, failing which inquiry report shall be finalized. The petitioner wanted to examine Shri Viendra Singh a retired constable as a witness in his defence. The inquiry officer fixed 20th December, 1999 as the date for recording his statement in Central Jail, Bikaner. While such witness appeared at Central Jail, Bikaner, the inquiry officer did not turn up to record his statement, in these circumstances, the said witness submitted a written application addressed to the inquiry officer through Superintendent Central Jail, Bikaner stating therein that even though he came to make his statement in Central Jail, Bikaner, but the inquiry officer did not turn up. In the circumstances, he requested for any other date. Ignoring such a request, the inquiry officer finally submitted his inquiry report on 30th December, 1999. The disciplinary authority served show cause notice upon the petitioner as per the requirement of Article 311(2) along with the

report of the inquiry on 12th January, 2000. On receipt of such notice, the petitioner by his application dated 07th January, 2000 requested the disciplinary authority to provide him copies of the statement of eight prosecution witnesses recorded during such inquiry as also copy of the letter dated 07th November, 1994 written by C.O. South (Inquiry Officer) to the disciplinary authority, to enable himself to prepare and submit his reply to show cause notice. The disciplinary authority did not however supply any of the demanded documents to the petitioner. In these circumstances, petitioner could not submit any reply to the show cause notice. The disciplinary authority however finally on 15th February, 2000 passed an order of penalty thereby dismissing the petitioner from service and directing that his salary during the period of suspension shall be liable to be forfeited. Feeling aggrieved by the order of penalty, petitioner submitted an appeal before DIG, Bikaner on 10th May, 2000 through Superintendent Central Jail, Bikaner. However, appellate authority also by its order dated 13th November, 2000 dismissed the appeal preferred by the petitioner. The petitioner in this writ petition has therefore prayed for writ of mandamus seeking quashment of the order of penalty or dismissal dated 15.02.2000 and the order of rejection of his appeal dated 13.11.2000 and reinstatement with all consequential benefits.

I have heard Mr.Harish Purohit, learned counsel for the petitioner and Mr.Rameshwar Dave, learned Dy. Government Advocate for the respondents.

Mr.Harish Purohit, learned counsel for the petitioner argued that disciplinary proceedings against the petitioner were conducted in gross violation of the principles of natural justice inasmuch as the petitioner was not afforded adequate opportunity to defend himself. Once when the disciplinary authority decided to drop the proceedings until the petitioner was released on bail, there was no reason to re-initiate the inquiry by order dated 20th January, 1998 while the petitioner was still in Jail. He argued that the petitioner throughout in the conduct of disciplinary proceedings against him was confined in jail. He could not participate in the disciplinary proceedings and also could not produce any evidence in his defence while in jail. He argued that the petitioner could from Jail arrange for evidence of only one retired constable in his defence but the inquiry officer did not turn up in jail to record his statement even though such witness submitted a written application to the inquiry officer for fixing any other date but the inquiry officer concluded the inquiry and submitted his report. It was argued that in spire of the request of the petitioner, he was not supplied with copies of statement of eight prosecution witnesses nor any

copy of the letter written by Inquiry Officer to the Disciplinary Authority. On merits of the charges, he submitted that the petitioner could not sent medical certificate with the telegram because the petitioner proceeded to his native place on duly sanctioned leave for seven days' and well within time sent a telegram for extension of such leave on medical grounds. It was misfortune of the petitioner that the telegram was received late. The petitioner possibly could not submit medical certificate with the telegram which he would have definitely produced when he reported back on duty. However, in the meantime, he was involved in a criminal case as was Jailed. As regards the merits of the charge No.3, learned counsel for the petitioner argued that in the face of acquittal recorded by this Court, it was no longer open to the inquiry officer and for that matter, to the disciplinary authority to record a finding contrary thereto. He therefore argued that the writ petition may be allowed in terms of the prayers contained therein.

On the other hand, Mr.Rameshwar Dave, learned Dy. Government Advocate argued that the inquiry against the petitioner was conducted strictly in accordance with the procedure contained in Rule 16 of the CCA Rules. One Shri Budh Ram retired Sub-Inspector of Police was appointed as defence assistant of petitioner who remained present throughout the

disciplinary proceedings. The petitioner was provided ample opportunity to submit his reply as also the defence evidence, but he failed to do so. The disciplinary proceedings at one stage was held in abeyance in the interest of justice until the petitioner was bailed out. However when the petitioner was convicted, the disciplinary authority decided to re-initiate the proceedings. The petitioner cited only one witness who too failed to appear before the inquiry officer. The inquiry officer found the charges proved against the petitioner and disciplinary authority on due application of mind to the record and report of the inquiry decided to inflect penalty of dismissal upon the petitioner which was commensurate with the gravity of the charges. Learned Dy. Government Advocate further argued that the petitioner's appeal against the order of penalty was also dismissed by a detailed speaking order. He therefore argued that the present writ petition is liable to be dismissed.

I have given my earnest consideration to the arguments advanced by both the learned counsel and perused the record.

When the disciplinary authority appointed C.O. South, Bikaner as the inquiry officer in the instant matter, the inquiry officer submitted a written report on 07.11.1994 to the disciplinary authority to the effect that the delinquent employee

Man Singh was in judicial custody in Central Jail, Bikaner and, therefore, unable to defend himself. It would thus be evident that disciplinary proceedings were held in abeyance owning to the detention of the petitioner in jail which according to the disciplinary authority would prevent the delinquent from effectively defending himself. Such a satisfaction of the disciplinary authority was based on consideration of salutary principles of natural justice. In arriving on such a satisfaction, the confinement of the petitioner in jail weighed heavily in his mind. The fact situation obtaining at the time of such satisfaction still remained valid when the disciplinary authority by its order dated 20.01.1998 decided to re-initiate inquiry. Reason therefore was that the petitioner was still confinement in Central Jail, Bikaner, there being only one distinction that earlier he was imprisoned as an under-trial but now he was a convict. When the disciplinary authority by its order dated 08.11.1999 held the department inquiry against petitioner until he was released on bail, there was no reason to deviate very such stand because even after conviction, petitioner was still not released on bail. The inquiry officer had rightly in his report dated 07.11.1994 recommended to the disciplinary authority that the petitioner could not arrange for his proper defence from confinement in jail and the disciplinary authority while accepting such recommendation, rightly decided to drop the inquiry proceedings

till release of the petitioner on bail. Re-initiation of inquiry by the disciplinary authority vide order dated 20.01.1998 was not therefore based on any valid consideration.

A perusal of the inquiry report would reveal that the entire inquiry has been conducted in a perfunctory and lackadaisical manner. The seven page hand written inquiry report hardly reflects any analysis of evidence and recording of findings based on logical reasonings. It merely consists in reproduction of charges and the evidence of the prosecution while at the same time stating in the findings pertaining to the each of the charges that the delinquent did not produce any written or documentary evidence in support of his defence. The inquiry officer in the report states that the delinquent has co-operated in early completion of the inquiry, but it was delayed on account of the fact that the witness did not turn up on time. He however does not make any reference as to why he did not examine the sole defence witness which the delinquent wanted to examine and who appeared in Central Jail, Bikaner but the inquiry officer did not turn up to record his statement. The inquiry officer does not make any reference to application submitted by such witness through Superintendent Central Jail, Bikaner. Reply submitted by the respondents before this Court is also vague and unspecific. When the petitioner was served with the show cause notice as

required by Article 311(2) of the Constitution of India, he demanded copies of statements of eight prosecution witnesses recorded during inquiry and the inquiry report submitted by the inquiry officer on 07.11.1994. The disciplinary authority however not only did not supply these documents to the petitioner but has also not made any mention of such a request in his order. The disciplinary authority has not recorded his findings separately and distinctly on each of the charge. The order passed by the disciplinary authority does not reflect application of mind on his part to the evidence available on record. The appellate authority also in rejecting the appeal has devoted first four pages of his order to mere reproduction of the charges and the contents of appeal and order of rejection in last one and half page. The discussion is merely confined to the fact that the acquittal of the appellant and other accused was recorded by this Court while giving them the benefit of doubt. The appellate authority however has not made any discussion whatsoever with regard to the charge of the absence of the petitioner and non-production of medical certificate by the petitioner. Collective analysis of the inquiry report and order of penalty and order of rejection of appeal leads me to hold that not only inquiry proceedings in the present matter were conducted in utter disregard of the principles of natural justice but there was complete violation of the procedure contained in Rule 16 of the

CCA Rules.

As a result of the aforesaid discussion, the order of penalty dated 15.02.2000 (Annexure-10) dismissing the petitioner from service and the order dated 13.11.2000 further dismissing his appeal are quashed and set aside. The respondents shall be at liberty to hold the inquiry pursuant to the charge-sheet 29th July, 1994. The petitioner shall be deemed to be under suspension from the date of order of penalty and shall be entitled to subsistence allowance throughout. The respondents are directed to conclude the disciplinary inquiry against the petitioner within a period of six months from the date of service of the copy of this order and pass final order within a period of one month thereafter. The petitioner shall be entitled to all the consequential benefits which shall be paid to him within a period of three months from the date of service of the copy of this order.

In the result, the writ petition is allowed in terms of the directions made above.

[MOHAMMAD RAFIQ],J.

Ashwini/-